

FIXED UNIT PRICE AGREEMENT FOR CONTRACTOR SERVICES

THIS AGREEMENT is made as of the _____ day of _____ in the year 2012, between **THE CITY OF LEESBURG, FLORIDA**, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the "CITY"), and **USSI, LLC** whose address is 752 Commerce Drive, Suite 15, Venice, Florida 34292 (hereinafter referred to as the "CONTRACTOR").

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the parties agree as follows:

1. Services. The CONTRACTOR shall perform the services described as Sanitary Sewer Line Smoke Testing. Nothing herein shall limit the CITY'S right to obtain proposals or services from other contractors for similar projects.

2. Compensation. CONTRACTOR shall be compensated for measured work performed at the unit prices submitted by the CONTRACTOR in response to Invitation to Bid 130011 as reflected by **EXHIBIT "A"**.

3. Labor and Materials. All work will be done in a competent and workmanlike manner, using quality, new materials in compliance with the ITB 130011 Statement of Work. CONTRACTOR shall guarantee all materials and workmanship furnished under this agreement as provided in the Statement of Work and contractor's bid submitted November 6, 2012, hereby incorporated by reference.

4. Authorized Expenses. The CITY will not be liable for any expenses incurred by the CONTRACTOR prior to the issuance of a Purchase Orders except as authorized by the CITY in writing.

5. Insurance. The CONTRACTOR will maintain throughout this Agreement the following insurance:

- a. Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles. Coverage limit will be \$1,000,000 combined single limits with the CITY named as an additional insured.
- b. Comprehensive General Liability, including
 - i. Contractor's Protective Liability Product, Completed Operations, and Contractual Liability in the amount of \$1,000,000.00
 - ii. Employer's Liability - \$500,000.00
 - iii. Bodily Injury - \$500,000.00 each person
 - iv. Property Damage - \$500,000.00 each person
 - v. Personal Injury Liability - \$500,000 each person with the CITY named as an additional insured.

- c. Worker's Compensation - Statutory Benefits
- d. A certificate of insurance evidencing all required coverages shall be delivered to CITY by CONTRACTOR prior to starting work. Each policy shall contain a provision that it may not be canceled for any reason without prior, written notice being given to CITY by the insurer. All policies shall be issued by insurers of recognized responsibility, which are licensed to do business in Florida.

6. Waiver of Lien. The CONTRACTOR agrees to make payment of all proper charges for labor and materials supplied and CONTRACTOR shall hold harmless the CITY against any claim arising out of: any unpaid bills for labor, services or materials furnished to this project.

7. Indemnification. CONTRACTOR shall defend, indemnify, and save harmless the CITY or any of their officers, agents, or servants and each and every one of them against and from all third party claims, suits, and costs of every kind and description, including attorney's fees, and from all damages to which the CITY or any of their officers, agents, or servants may be put by reason of personal injury to persons or tangible property of others to the extent caused by the performance of CONTRACTOR'S duties under this Contract, through the negligence of the CONTRACTOR, or through any act or omission on the part of the CONTRACTOR, his agents, employees, or servants. The CONTRACTOR'S indemnification is conditioned on the CITY'S (a) providing reasonable notice to the CONTRACTOR of any claim, and (b) providing reasonable cooperation in the defense of any claim.

8. Codes, Laws, and Regulations. CONTRACTOR will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

9. Permits, Licenses, and Fees. CONTRACTOR will obtain and pay for any permits and licenses required by law that are associated with the CONTRACTOR'S performance of the Scope of Services. The CITY shall obtain and pay for any permits and licenses required by law that are associated with the CITY'S installation of any equipment and/or materials hereunder.

10. Access to Records. CONTRACTOR will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Said records will be available for examination in person by the CITY at the CONTRACTOR'S place of business during normal business hours. Said records will be maintained for a period of three (3) years after the date of the invoice.

11. Contingent Fees Prohibited. The CONTRACTOR warrants that he or she has not employed or retained any company or person, other than a bona fide employee and / or its authorized representative working solely for the CONTRACTOR, to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee and / or its authorized representative working solely for the CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

12. Payment. CITY shall compensate CONTRACTOR for their services as detailed in **EXHIBIT "A"** following acceptance of the work by the CITY. No other costs or services shall be billed to the CITY.

13. Ownership of Documents. All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or disclosed by the CITY (or by such sub-consultants and specialty consultants of the CITY) in rendering services hereunder shall be the sole property of the CITY. All devices, designs (including drawings), estimates, prices, notes, electronic data and other documents or information prepared or disclosed by the CONTRACTOR, and all intellectual property rights, shall remain CONTRACTOR'S sole property. The CITY and the CONTRACTOR grant to the other party to this agreement a non-exclusive, non-transferable license to use any such material solely for the other parties' use for the manufacturing of, installation of, or the use of the equipment purchased under this agreement. Unless required by applicable law, neither the CITY nor the CONTRACTOR shall disclose any such material to any third party without the other party's prior written consent. All original documents shall be permanently kept on file at the office of the respective parties.

14. Independent Contractor. The CONTRACTOR is an independent contractor and as such will be responsible for paying his own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this agreement.

15. Assignment. Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

16. No Third Party Beneficiaries. This Agreement gives no rights or benefits to anyone other than the CONTRACTOR and the CITY.

17. Jurisdiction. The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

18. Term. The initial term of the agreement shall be for a period of 24 months. Work shall be performed on an as needed / as ordered basis. The CITY will issue a purchase order detailing the work ordered. All ordered work will be completed within the agreed upon time stated on the purchase order.

19. Termination. All or part of this Agreement may be terminated by the CITY for its convenience on fifteen (15) days written notice to the CONTRACTOR. In such event, the CONTRACTOR will be entitled to compensation for services competently provided prior to cancellation or suspension up to the date of termination. The CONTRACTOR shall be entitled to compensation for all approved and accepted work performed prior to the written notice of termination.

20. Cost Adjustments. The cost for all items as bid herein shall remain firm for the first year of the contract. Costs for subsequent years and any extension term years shall be subject to an adjustment only if increases occur in the industry. However, unless very unusual and significant changes have occurred in the industry, such increases shall not exceed 5% per year or, whichever is less, the latest yearly percentage increase in the All Urban Consumers Price Index (CPU-U) (National) as published by the Bureau of Labor Statistics, U.S. Dept. of Labor. The yearly increase, or decrease in the CPI shall be that latest index published and available ninety (90) days prior to the end of the contract year then in effect compared to the index for the same month one year prior. Any requested cost increase shall be fully documented and submitted to the City at least ninety (60) days prior to the contract anniversary date. Any approved cost adjustments shall become effective upon the anniversary date of the contract. In the event the CPI or industry costs decline, the City shall have the right to receive, from the Contractor, a reasonable reduction in costs that reflect such cost changes in the industry. The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the contract can be cancelled by the City upon giving thirty (30) days written notice to the Contractor.

21. Contact Person. The primary contact person under this Agreement for the CONTRACTOR shall be **Dion Vlasak - President**. The primary contact person under this Agreement for the CITY shall be **Jimmy Feagle, Deputy Public Works Director**.

22. Approval of Personnel. The CITY reserves the right to approve the contact person and the persons actually performing the CONTRACTOR services on behalf of CONTRACTOR pursuant to this Agreement. If CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of CONTRACTOR pursuant to this Agreement, CITY may require CONTRACTOR assign a different person or persons be designated to be the contact person or to perform the CONTRACTOR services hereunder.

23. Notice to Owner. All Notice to Owners (NTO) issued by sub-contractors and material suppliers must be mailed or delivered to:

PURCHASING MANAGER
RE: ITB 130011
PO Box 490630, Leesburg, FL 34749 - 0630

24. Authority to Obligate. Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing and bind and obligate such party with respect to all provisions contained in this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates under each signature.

**“CONTRACTOR”
USSI, LLC**

By: _____

Printed: _____

Its (title): _____

Date: _____

Approved as to form:

City Attorney

**“CITY”
The City of Leesburg, Florida**

By: _____
Mayor

Attest: _____
City Clerk

Date: _____

EXHIBIT “A”

I. UNIT PRICING

Item No.	Description	Unit	Unit Price
1	Smoke Testing <u>8” diameter</u> Mains and Report Preparation IAW the specifications.	LF	\$0.17
2	Smoke Testing <u>10” diameter</u> Mains and Report Preparation IAW the specifications.	LF	\$0.17
3	Smoke Testing <u>12” diameter</u> Mains and Report Preparation IAW the specifications.	LF	\$0.17
4	Smoke Testing <u>18” diameter</u> Mains and Report Preparation IAW the specifications.	LF	\$0.17
5	Smoke Testing <u>21” diameter</u> Mains and Report Preparation IAW the specifications.	LF	\$0.17

II. OTHER

- A. **General Conditions**. The Terms and General Conditions from the Invitation to Bid 130011 are incorporated by reference and made a part hereof.
- B. **Special Conditions**. The Special Conditions from the Invitation to Bid 130011 are incorporated by reference and made a part hereof.
- C. **Addenda**. Not applicable.
- D. **Vendor Bid Submittal**. The bid response to Invitation to 130011 submitted by USSI, LLC dated November 6, 2012, is incorporated by reference and made a part hereof.

SUPPLEMENT TO AGREEMENT

Items checked are applicable and a supplement to the Agreement.

- ☐ **Guaranty of Faithful Performance and Payment** - A Public Construction Bond (Performance and Payment Bond), written by a Surety firm satisfactory to the City of Leesburg on the forms provided by the CITY which comply with Section 255.05(1), Florida Statutes, will be required of the successful Bidder to guarantee that he will deliver a complete project under his Contract in strict accordance with the Contract Documents and that he will pay promptly all persons supplying him with labor or materials for the work.

The Public Construction Bond shall be for an amount not less than the Total Contract Price as agreed to by both parties and set forth in the Agreement. The cost of this bond shall be borne by the CONTRACTOR AND included in the price bid in the Bid Response.

This bond shall be substantially in the form provided herein and written by a qualified Surety firm and through a reputable and responsible surety bond agency licensed to do business in the State of Florida and Lake County and meet the following requirements:

The Surety must be rated as "A" or better as to strength by Best's Insurance Guide, published by Alfred M. Best Company, Inc., 75 Fulton Street, New York, New York.

Bonding Limit - Any One Risk: The Bonding Limit of the Surety shall not exceed ten (10) percent of the policy-holders surplus (capital and surplus) as listed by the aforementioned Best's Insurance Guide. The completed Bond shall be executed in four (4) counterparts and delivered to the City of Leesburg with the required Power-of-Attorney and executed contract.

- ☒ **Illegal Alien Labor** - Contractor shall comply with all provisions of the Federal Immigration and Control Act of 1986 (8 U.S. Code § 1324 a) and any successor federal laws, as well as all provisions of Section 448.09, Florida Statutes, prohibiting the hiring and continued employment of aliens not authorized to work in the United States. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor is in compliance with the terms stated within. The General Contractor nor any subcontractor employed by him shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor agrees that it shall confirm the employment eligibility of all employees through participation in E-Verify or an employment eligibility program approved by the Social Security Administration and will require same requirement to confirm employment eligibility of all subcontractors.

All cost incurred to initiate and sustain the aforementioned programs shall be included in contract price. Failure to meet this requirement may result in contract termination by the City.

- ☐ **Grant Requirements.** CONTRACTOR acknowledges that CITY is obtaining a significant portion of the funding for this project from various sources including grants from other governmental agencies. To the extent it is not inconsistent with the terms of this Agreement to do so CONTRACTOR will assist CITY upon request in assuring that all conditions and requirements of the various grants are fulfilled so that funding for the project is preserved.

☐ **Access to Records by Others.** The project covered by this Agreement is funded in whole or part by a grant from a government agency other than the CITY. As a requirement of grant funding CONTRACTOR shall make records related to this project available for examination to any local, state or federal government agency, or department, during CONTRACTOR'S normal business hours. Said records will be maintained for a period of five (5) years after the date of the invoice.

☒ **E-VERIFY.** Contractor shall comply with all provisions of the Federal Immigration and Control Act of 1986 (8 U.S. Code § 1324 a) and any successor federal laws, as well as all provisions of Section 448.09, Florida Statutes, prohibiting the hiring and continued employment of aliens not authorized to work in the United States. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor is in compliance with the terms stated within. The General Contractor nor any subcontractor employed by him shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor agrees that it shall confirm the employment eligibility of all employees through participation in E-Verify or an employment eligibility program approved by the Social Security Administration and will require same requirement to confirm employment eligibility of all subcontractors. All cost incurred to initiate and sustain the aforementioned programs shall be included in contract price. Failure to meet this requirement may result in contract termination by the City.